IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6625 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

CGHYANDEEP CO.OP.HOUSING SOCIETY

Versus

DEPUTY COLLECYOR

Appearance:

MR B. N. Raval for Petitioner

MR M.A.BUKHARIA, AGP for Respondent No. 1

RULE SERVED for Respondent No. 2, 3, 4, 5

CORAM : MR.JUSTICE C.K.THAKKAR

Date of decision: 14/03/2000

ORAL JUDGEMENT

This petition is filed against an order passed by the Deputy Collector , confirmed by the Collector as also by the State Government.

The case of the petitioner was that it was a cooperative society registered under the Gujarat Cooperative Societies Act, 1961 (hereinafter referred to as `the Act'). There was agricultural land bearing Survey No. 79 of village Valpur , Taluka Nasvadi. It was granted to one Shivabhai Maganbhai Bhil . It appears that in pursuance of an application made, the land was permitted to be converted for non-agricultural use vide an order dated 27th January, 1977. Entry to that effect was made on December 28, 1977. It was the case of the petitioner society that the society got itself registered on 21st April , 1979 and purchased the above land on 14th May, 1979. Registered sale deed was executed in favour of the society. The society paid an amount of Rs. 42,580/- . Entire amount was paid as reflected in the registered sale deed from 7th March, 1979 to 14th May, 1979. The society, thereafter, made construction of residential houses for its members.

Thereafter, in 1983, i.e. after about four years, suo motu proceedings were initiated by the Deputy Mamlatdar, Dabhoi and a case was registered as Sharat Bhang Case No.2 of 1983 and an order was passed holding that the sale effected by the vendor Shivabhai Maganbhai Bhil in favour of the society was illegal and contrary to law . Accordingly, vide his order dated 31st August, 1984 , the Deputy Mamlatdar set aside the sale and ordered that the land be forfeited to the Government in view of breach of conditions imposed on the grantee. He also passed an order that after recovery of nominal amount of Re. 1/-, land should be regranted in favour of the origial grantee.

Being aggrieved by the said order, the petitioner preferred an appeal before the Collector, Baroda being Land Appeal No. 1 of 1985. The Collector, vide his order dated 18th October 1985, dismissed the appeal filed by the petitioner society. However, he set aside the order passed by the Deputy Collector re-granting the land in favour of original grantee. That order was taken in revision and the revision application was also dismissed. It is against that order that the present petition was preferred by the petitioner society.

On 1st December, 1988, Rule was issued and interim relief in terms of para 5 (II) was granted. Para 5 (II) reads as under :

"(II) To stay operation and implementation of the order Annexure C dated 31.8.1984, passed by

Deputy Collector , Baroda in Hukam No. `Sharat Bhang' 2/83 which was confirmed by the Collector of Baroda on 28.10.1985 and also confirmed by Special Secretary in GRD/JMN 76/86 and be pleased to restrain the respondents, their servants, agents from taking over possession of land bearing survey No. 79 of village Valpur, taluka Nasvadi, District- Baroda and not to proceed further in the matter till the final disposal of this petition."

Today, the matter is called out for final hearing.

I have heard Mr. B.N.Raval for the petitioner and Mr. M.A. Bukhari, for the respondent authorities.

Several contentions were raised by Mr. Raval. He submitted that the petitioner society was duly registered under the Act and had purchased the land from Shivabhai Maganabhai Bhil by a registered sale deed. Entire amount of consideration was paid and sale deed was registered. Construction of houses was thereafter made and all the members are in possession of residential houses. He also submitted that land was permitted to be converted into non-agricultural use and thereafter residential houses were constructed. He stated that there was nothing in village Form 7/12 as to the nature of land and on what basis, proceedings were initiated by the Deputy Collector. He submitted that powers cannot be said to have been exercised within reasonable time as held by the Supreme Court in State of Gujarat vs. Raghav Natha, AIR 1969 SC 1269, reiterated by the Supreme Court and followed by this Court in many cases. He, therefore, submitted that the petition deserves to be allowed.

Mr. Bukhari, on the other hand, submitted that when there was breach of condition, the orders passed by the authorities cannot be said to be contrary to law. Regarding reasonable period, he stated that it depends upon facts and circumstances of each case and no rule of universal application can be laid down . If the authorities have come to the conclusion that powers were exercised within reasonable time, this Court will not substitute its opinion .

In my view, the petition deserves to be allowed. As is clear, the land was agricultural land. Permission for non-agricultural use was, however, granted and to that effect, an entry was made. Land was, thereafter, sold to the petitioner society and a registered sale deed was executed between the parties and thereafter construction

of houses was made. In 1983, for the first time, a case was registered. Thus,there was gross and inordinate delay on the part of the competent authority in initiating proceedings.It is nowhere stated as to how such long time was taken. It is, no doubt, true that concept of `reasonable time' depends upon the facts and circumstances of each case . But at the same time, it was incumbent on the part of the authorities to show that the power was exercised within reasonable time. If sale deed was executed and registered as early as in May, 1979 and the proceedings were initiated in 1983, the authorities could have pointed out circumstances why it took so much time in initiating the proceedings. Again, between 1979 and 1983, after execution of sale deed, construction of residential houses was made by the petitioner society and as stated in the orders, members were residing . In these circumstances, it cannot be said that power was exercised within reasonable time which would prejudicially affect the members of the society.

For the foregoing reasons, the petition deserves to be allowed and is accordingly allowed. Order passed by the Deputy Collector , confirmed by the Collector and by the Government deserve to be set aside and are accordingly set aside. Rule is made absolute . No order as to costs.

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